

Department of Public Health
and Human Services

FOOD STAMP PROGRAM

Section:
CASE MANAGEMENT

Subject:
Administrative Review

Supersedes: FS 1506-2 (10/01/05)

References: 7 CFR 273.15
42 CFR 431.200 through .246
ARM 37.5.304; .307; .313; .316; .318; .322; .325; .328; .331; .334; .337; .503;
.505

GENERAL RULE—An Administrative Review is a meeting between an OPA representative and the applicant/participant/claimant and/or his/her representative, for the purpose of resolving a dispute on the Department's action, to possibly avoid an unnecessary hearing or diminish confusion at the hearing. An Administrative Review will:

1. Identify the issues related to the adverse action; and,
2. If possible, resolve questions and issues relating to the adverse action to the claimant's satisfaction.

**≥REVIEW TIME
FRAME**

An Administrative Review must be held, completed, and a report submitted to the Hearing Officer within 15 calendar days from the date the Hearing Officer faxes the Review Request to the OPA authority unless an expedited review is requested.

The State agency shall assure that within 60 days of the receipt of a request for a fair hearing, the hearing is conducted, a decision is reached and the household and local agency are notified of the decision.

The State agency may also offer agency conferences to households adversely affected by an agency action. The State agency shall advise households that use of an agency conference is optional and that it shall in no way delay or replace the fair hearing process.

NOTE: The Administrative or Expedited Review will be held at the OPA of the claimant's county of residence or at any other location accessible and agreeable to all parties.

**EXPEDITED
REVIEWS**

TANF: The OPA representative shall offer an expedited Administrative Review to claimants who contest a denial of Emergency TANF Assistance.

≥ The household has 5 working days from the date of the denial to request an expedited review.

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The Administrative Review for the Emergency Assistance denial must be held within five working days from the date the request is received by the Department.

NOTE: To meet the time limits, the review may be conducted by telephone in those areas which require substantial travel to conduct an in-person review. The Fair Hearings Office must be informed of any delay in completing the review.

FOOD STAMPS: When a client is adversely affected, an Agency Conference for the review for denial of expedited Food Stamps must be held within two working days from the denial date, or later, at the household's request.

GROUP REVIEWS

An Administrative Review may be held for a group when the:

1. Claimants agree to participate in a group rather than individually;
2. Cases involve related issues of State and/or Federal law, regulations or policies; and,
3. Claimants (or representatives) involved must each be allotted time to present his/her case.

≥RESCHEDULING

If the claimant cannot appear at the date and time initially set for the administrative review conference, reschedule it to a time and date that is more convenient for the claimant. If the claimant does not appear at the rescheduled conference, reschedule it again if the claimant has good cause as described below.

GOOD CAUSE

The claimant may claim good cause for failure to appear at the scheduled Administrative Review conference because:

1. There is a temporary breakdown in transportation or child care arrangements;

NOTE: Transportation is considered to be available if the claimant has the use of a private vehicle, public transportation, or can ride with someone else, provided the claimant will not be required to accept a ride under circumstances which a reasonable person would consider dangerous or unsuitable.

2. A temporary severe illness or injury serious enough to prevent attending the meeting;

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3. Severe weather conditions which make travel impossible or dangerous as experienced by others in the community; or,
4. Any other circumstance which is beyond the claimant's control.

**CLAIMANT
REPRESENTATION**

The claimant may be represented by:

1. Him/herself; or,
2. An authorized representative, such as:
 - a. Legal counsel; or,
 - b. A relative, friend, or other spokesperson.

**COUNTY/DEPT.
REPRESENTATION**

The OPA/Department is represented by an OPA staff member such as the County Director (or designee) and/or Regional or Central Office Policy Specialist. When the issue in dispute is complex and/or appears to have legal ramifications, the County Director/Designee shall contact their Regional Policy Specialist and request assistance from the Department's Office of Legal Affairs. For example, issues related to funds placed in trusts or resource accessibility, or if the claimant has indicated his/her legal counsel wishes to address State or Federal law.

If the Fair Hearing Officer requests a legal brief from all parties, the County Representative shall contact the Office of Legal Affairs and request them to prepare the brief.

NOTE: The OPA Case Manager who processed the case may attend the Administrative Review, but cannot act as the OPA representative.

**≥REVERSAL/
MODIFIED
ACTION**

At any time during an Administrative Review, an adverse action may be reversed or modified by the local OPA if circumstances warrant such action. In that case, a hearing would not need to be held unless the claimant protests the modified adverse action. If the claimant is satisfied with the modified/reversed determination, a withdrawal of the appeal from the claimant is necessary.

**EFFECT ON
HEARING RIGHTS**

An Administrative Review does not diminish, delay or void the claimant's right to a fair hearing. When the Administrative Review does not resolve questions and issues relating to the adverse action to the claimant's satisfaction, the Hearing Officer must proceed with the hearing.

FAILURE TO

When the claimant (or representative) fails to appear for an

APPEAR

Administrative Review, without good cause, the OPA will:

1. Dismiss the Administrative Review,
2. Complete Form DPHHS-LS-007, 'Administrative Review Report ', and,
3. Distribute it according to the instructions on the bottom of the form.

The Hearing Officer will proceed with the hearing schedule and notify the claimant.

≥CLAIMANT WAIVES REVIEW

The claimant (and/or representative) has the right to waive an Administrative Review. When the claimant chooses to do so, all exhibits and other pertinent items including a signed Form DPHHS-LS-007, 'Administrative Review Report' are forwarded to the Office of Fair Hearings, Helena. A signed form is not necessary if the request to waive the Administrative Review has been received verbally.

≥FORM DPHHS-LS-007

The Fair Hearings Office sends Form DPHHS-LS-007, 'Administrative Review Report', to the OPA as notification of the hearing request. A faxed copy is sent first, followed by a hard copy. Upon receipt of this form, the OPA must schedule the Administrative Review. Once the Review is completed, waived, or withdrawn, the OPA completes the bottom portion of the form, having the claimant sign and check the appropriate box, and returns it to the Fair Hearing Office.

1. For the Food Stamp Program and TANF cash assistance, if the Administrative Review is held by telephone and the claimant withdraws a hearing orally, the OPA contacts the Office of Fair Hearings indicating that verbal withdrawal was given at the telephone Administrative Review.

NOTE:

Obtaining an oral withdrawal over the telephone is an exception to the routine practice, and not to be used when conducting Administrative Reviews unless the individual or his/her representative is unable to come into the OPA.

2. For Medicaid, if the Administrative Review is held by telephone and the claimant withdraws the hearing orally, the OPA mails Form DPHHS-LS-007 to the claimant to obtain the withdrawal signature. Request the claimant to return the form to the OPA or

the Office of Fair Hearings within five calendar days. If the form is not returned within five calendar days, notify the Office of Fair Hearings. For Medicaid, a verbal withdrawal is not allowed. The fair hearing must be held if the claimant does not sign the Form DPHHS-LS-007 or provide a written statement of withdrawal.

≥FOOD STAMP PROCEDURE

Responsibility	ACTION
≥Hearing Officer:	1. Upon receipt of the claimant's hearing request, complete the top portion of Form DPHHS-LS-007, 'Administrative Review Report' fax notification and send the hard copy of the form to the OPA.
≥	2. Notify the claimant that an Administrative Review will be scheduled with the local OPA representative(s) within 15 calendar days.
OPA:	3. Upon receiving Form DPHHS-LS-007: <ul style="list-style-type: none"> a. Schedule the review within the appropriate time lines; <div style="margin-left: 40px;"> NOTE: If either the claimant or the county has good cause to delay the Administrative Review, the Fair Hearings Office must be informed. </div>
≥	<div style="margin-left: 40px;"> NOTE: The Administrative Review must be completed within 15 days. </div> <ul style="list-style-type: none"> b. Notify the claimant; c. Confer with the OPA Case Manager who processed (or is processing) the case; d. Gather exhibits (documents, etc.) substantiating the adverse action; and, e. Research and collect pertinent legal cites (e.g., ARMs, CFRs, etc.) and, if necessary, review the action with the Regional and/or Central Office Policy Specialist.
County Representative:	4. Open the Administrative Review by: <ul style="list-style-type: none"> a. Stating its purpose and scope;

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- b. Reminding the claimant the review has no effect on the right to a fair hearing;
- c. Explaining the client's:
 - i) Right to continued benefits pending the Fair Hearing decision; and,
 - ii) Responsibility to repay continued benefits if the adverse action is upheld.

Claimant/
Representative:

5. Explain why a hearing was requested.

County Representative:

6. Explain why the adverse action was taken.
7. Provide documentation in support of the adverse action.
8. Provide clarification of state policies and regulations which may not be entirely understood.
9. Explain the laws and regulations under which the agency operates.

≥All Participants:

10. Reach a mutually acceptable solution within 15 days or proceed to the hearing.

County Representative:

11. Upon completion of the review, complete, sign and date 'Reviewer's Narrative' section of Form DPHHS-LS-007.

NOTE: The narrative must include a brief summary of both the Department's and the claimant's positions.

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NOTE: If the review is conducted by telephone, send a completed DPHHS-LS-007 to the claimant with instructions to sign and return it to the OPA within the 15 day time frame. If it is not returned in the 15 day time frame the OPA must contact the Office of Fair Hearings.

Claimant/
Representative:

12. Complete, sign and date the 'Results of Administrative Review' section of Form DPHHS-LS-007 to indicate whether or not a resolution was reached.

County Representative:

13. If the resolution:

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- a. Is favorable to the claimant, take action within 10 days correct any benefits which were under issued/underpaid and forward the DPHHS-LS-007 to the hearing office; or,
- b. Sustains the adverse action, forward DPHHS-LS-007 to hearing office and continue benefits, if appropriate. Inform the hearing office of any scheduling conflicts.

Hearing Officer:

14. If the issues were not resolved:

- a. Set the time and place for a Fair Hearing; and,
- b. Notify the claimant and OPA.

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